



## *Report to the Auburn City Council*

Action Item

Agenda Item No. 6

City Manager Approval

**To:** Honorable Mayor and City Council Members  
**From:** Valerie Harris, Chief of Police  
**Date:** July 27, 2009  
**Subject:** Maintenance & Service Contract for Police Department Radio/Communication System

### The Issue

Should the City Council approve the execution of a renewed one year Contract with ComTech Communications for maintenance and ongoing service of the Auburn Police Department's base radio, repeaters, mobile radios, handheld radios and all other associated system components for the department's emergency communications system?

### Conclusion and Recommendation

Staff recommends that the City Council by **RESOLUTION** authorize the City Manager or his designee to execute a one year renewal Contract with ComTech Communications for ongoing maintenance and repair service of all components comprising the Auburn Police Department communications system not to exceed the amount of \$15,000.

### Background

In 2006, the Auburn Police Department moved to a new radio service provider for the installation and repair of all radio communication equipment used by the department. The move to ComTech Communications proved to be the correct choice as service levels for general radio maintenance and after hour emergency response for equipment failure greatly improved. The contract provided for service of all radio system components including: radio repeater, voting receivers, base station, patrol vehicle radios, handheld radios, antennas, cabling, tower structures, and other communication-related components for the existing system. ComTech provided satisfactory service during the term of their contract and this department's desire is to continue service with this vendor.

ComTech conducted a comprehensive assessment of the existing radio format and has provided direction for future system upgrades and needs. Efforts to obtain funding for an entire base station radio system upgrade are currently underway to ensure compliance with the Federal Communications Commission interoperability mandate with an implementation date for the year 2012. Interoperability mandates were established by joint efforts of the Association of Public Safety Communications Officials International (APCO), the National Association of State Telecommunications Directors (NASTD), selected Federal Agencies and the National Communications System (NCS). It was established to address the need for

common digital public safety radio communications standards for First Responders and Homeland Security/Emergency Response professionals. This department's desire is to continue with Com Tech for routine maintenance as well as planning and procurement of radio systems technology to meet interoperability mandates put forth to all public safety First Responders.

**Alternatives Available to Council; Implications of Alternatives**

1. Proceed with Staff Recommendation
2. Do not proceed with staff recommendation and pursue other potential service contracts with alternative vendors. Continue to use ComTech for emergency response call outs only until comprehensive research and vendor comparisons have been made.

**Fiscal Impact**

The contract amount of \$15, 000.00 includes an increase of \$3,000.00 over the previous contract with ComTech. This increase is intended to cover the slight increases by this vendor for hourly service fees indicated in the contract. It also gives consideration to the fact the radio system is extremely old and the potential of increased calls for service exist. (See attachments for additional information)

1 RESOLUTION NO. 09-

2 RESOLUTION AUTHORIZING CONTRACT RENEWAL FOR THE  
3 MAINTENANCE & REPAIR OF POLICE DEPARTMENT RADIO EQUIPMENT  
4 -----

5 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

6 That the City Council of the City of Auburn does hereby authorize the  
7 City Manager or his designee to execute a contractual agreement for services  
8 with Comtech for maintenance and repair of police department emergency  
9 radio system. Equipment to be serviced under this contract include the primary  
10 police radio system, police vehicle radios, patrol officer handheld radios, radio  
11 system repeaters - receivers and radio infrastructure. The contract total for the  
12 period of August 1, 2009 through July 31, 2010 shall not exceed \$15,000.00.

13 DATED: July 27th, 2009

14 \_\_\_\_\_  
15 J. M. Holmes, Mayor

16 ATTEST:

17 \_\_\_\_\_  
18 Joseph G. R. Labrie, City Clerk

19 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify  
20 that the foregoing resolution was duly passed at a regular meeting of the City  
21 Council of the City of Auburn held on the 27th day of July 2009 by the  
22 following vote on roll call:

23 Ayes:

24 Noes:

25 Absent:

26 \_\_\_\_\_  
27 Joseph G. R. Labrie, City Clerk  
28

# ***VENDOR SERVICES AGREEMENT***

(City of Auburn / ComTech Communications, Inc.)

## **1. IDENTIFICATION**

THIS VENDOR SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and ComTech Communications ("Vendor"), a *corporation*.

## **2. RECITALS**

- 2.1 City has determined that it requires the following technical services from a vendor:

On-going maintenance, service and installation for repeater, voting receivers, base station, mobile, and handheld radios operated by the City of Auburn Police Department. This would include; antennas, cabling, tower structures and any other radio communication-related equipment in use for the police communications system.

- 2.2 Vendor represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Vendor further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, City and Vendor agree as follows:

## **3. DEFINITIONS**

- 3.1 "Scope of Services": Such services as are set forth in Vendor's August 1, 2009 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Vendor's August 1, 2009 fee schedule to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.3 "Commencement Date": August 1<sup>st</sup>, 2009
- 3.4 "Expiration Date": July 31, 2010

**4. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

**5. CONSULTANT'S SERVICES**

- 5.1 Vendor shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Vendor under this Agreement exceed the sum of Fifteen Thousand Dollars (\$15,000.00) unless specifically approved in advance and in writing by City.
- 5.2 Vendor shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Vendor shall perform all work to the highest professional standards of Vendor's trade and in a manner reasonably satisfactory to City. Vendor shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Vendor shall not perform any work for another person or entity for whom Vendor was not working at the Commencement Date if both (i) such work would require Vendor to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Vendor's performance of such work.
- 5.5 Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Vendor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

**6. COMPENSATION**

- 6.1 City agrees to compensate Vendor for the services provided under this Agreement, and Vendor agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Vendor shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Vendor.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Vendor by City on a time-and-materials basis using Vendor's standard fee schedule. Vendor shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Vendor be entitled to increase fees for services rendered before the thirtieth day after Vendor notifies City in writing of an increase in that fee schedule.

## **7. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Vendor in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Vendor may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Vendor.

## **8. RELATIONSHIP OF PARTIES**

Vendor is, and shall at all times remain as to City, a wholly independent contractor. Vendor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Vendor or any of Vendor's employees, except as set forth in this Agreement. Vendor shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

## **9. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Vendor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Vendor without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

## **10. INDEMNIFICATION**

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Vendor acknowledges that City would not enter into this Agreement in the absence of Vendor's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Vendor shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.3 City shall have the right to offset against any compensation due Vendor under this Agreement any amount due City from Vendor as a result of Vendor's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Vendor arising from Vendor's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Vendor under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Vendor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Vendor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Vendor in the performance of this Agreement. In the event Vendor fails to obtain such indemnity obligations from others as required herein, Vendor agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Vendor's subcontractors or any other person or entity involved by, for, with or on behalf of Vendor in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not; waive any rights that it may possess against Vendor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

## **11. INSURANCE**

- 11.1 During the term of this Agreement, Vendor shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Vendor's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

- 11.1.1 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- 11.1.2 Worker's Compensation insurance as required by the laws of the State of California.
- 11.1.3 Vendor shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.1.4 The policy or policies required by this Agreement shall be issued by an insurer with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.1.5 Vendor agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Vendor's expense.
- 11.1.6 At all times during the term of this Agreement, Vendor shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insured's. Vendor shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 11.2 Vendor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.3 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insured's. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Vendor agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.



- 11.4 The insurance provided by Vendor shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Vendor's insurance and shall not contribute with it.
- 11.5 All insurance coverage provided pursuant to this Agreement shall not prohibit Vendor, and Vendor's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Vendor hereby waives all rights of subrogation against the City.
- 11.6 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Vendor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Vendor shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.7 Procurement of insurance by Vendor shall not be construed as a limitation of Vendor's liability or as full performance of Vendor's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

## **12. MUTUAL COOPERATION**

- 12.1 City shall provide Vendor with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Vendor's services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Vendor's performance in connection with this Agreement, Vendor shall render any reasonable assistance that City may require in the defense of that claim or action.

## **13. RECORDS AND INSPECTIONS**

Vendor shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

#### 14. PERMITS AND APPROVALS

Vendor shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Vendor's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

#### 15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Vendor's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

<p>If to City</p> <p>City of Auburn 1225 Lincoln Way Auburn CA 95603 Telephone: (530) 823-4211 Facsimile: (530) 823-4216</p>	<p>If to Vendor:</p> <p><i>ComTech</i> <i>120 Main Avenue, Suite G</i> <i>Sacramento, Calif. 95838</i> Telephone:(916)568 7800 Facsimile: (916)568 2280</p>
<p>With courtesy copy to:</p> <p>Michael G. Colantuono, Esq. Auburn City Attorney Colantuono, Levin &amp; Rozell, APC 11406 Pleasant Valley Road Penn Valley, CA 95946-9024 Telephone: (530) 432-7359 Facsimile: (530) 432-7356</p>	

#### 16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

## **17. TERMINATION**

- 17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Vendor. Vendor shall have the right to terminate this Agreement for any reason on thirty calendar days' written notice to City. Vendor agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Vendor, then Vendor shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Vendor be entitled to receive more than the amount that would be paid to Vendor for the full performance of the services required by this Agreement.

## **18. GENERAL PROVISIONS**

- 18.1 Vendor shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Vendor.
- 18.2 In the performance of this Agreement, Vendor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Vendor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Vendor unless in writing.
- 18.5 Vendor shall not be liable for any failure to perform if Vendor presents acceptable

evidence, in City's sole judgment that such failure was due to causes beyond the control and without the fault or negligence of Vendor.

- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Vendor hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Vendor with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Vendor.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**“City”**  
**City of Auburn**

**“Vendor”**  
*Name of Company or Individual*

By \_\_\_\_\_

By: \_\_\_\_\_  
*Name, Level of Officer e.g., Vice President*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
*Name, Level of Officer e.g., Vice President*

Date: \_\_\_\_\_

Attest:

By \_\_\_\_\_  
Deputy City Clerk

Date: \_\_\_\_\_

